

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

MARGARET L. WENDT FOUNDATION  
HOLDINGS, INC.,

Plaintiff,

v.

MARK PAGANO, BARRY MORRIS, ANJA WRIGHT  
and DIANNE DIMATTEO CARNEY, collectively d/b/a  
ROYCROFT REALTY,

Defendants.

Case No.

**COMPLAINT**

Plaintiff Margaret L. Wendt Foundation Holdings, Inc. (“Wendt Holdings”), by its undersigned counsel, for its Complaint against Defendants Mark Pagano, Barry Morris, Anja Wright and Dianne DiMatteo Carney, collectively d/b/a Roycroft Realty (“Roycroft Realty”), alleges as follows:

**INTRODUCTION**

1. This is an action for trademark infringement, trademark dilution and unfair competition under the federal Lanham Act and New York law. The claims arise from the intentional, wrongful, and improper infringement by Roycroft Realty of Wendt Holdings’ ROYCROFT trademarks.

2. The Margaret L. Wendt Foundation (“Wendt Foundation”), including its wholly-owned subsidiary Wendt Holdings, has spent in excess of \$15,000,000 in its mission to preserve and promote all things “Roycroft,” including the restoration and renovation of the historic Roycroft Inn and Roycroft Campus in East Aurora, New York.

3. As part of their preservation efforts, Wendt Holdings obtained by assignment all of the interest in and to the ROYCROFT trademarks and the goodwill associated therewith,

including United States Trademark Registration No. 4,024,819 for use on hospitality services (the “ROYCROFT Marks”).

4. Roycroft Realty is trading on the goodwill symbolized by the ROYCROFT Marks by selling real estate services by using an infringing “Roycroft” designation.

5. Roycroft Realty’s infringement is damaging Wendt Holdings by causing likely confusion among consumers and potential business partners between genuine services bearing the ROYCROFT Marks and closely-related real estate services bearing Roycroft Realty’s infringing “Roycroft” designation. The irreparable harm to Wendt Holdings caused by Roycroft Realty’s conduct will be compounded if the infringement is not permanently enjoined.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the subject matter of this action pursuant to Section 39 of the Lanham Act (15 U.S.C. § 1121) and 28 U.S.C. § 1331, and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

7. Venue is properly founded in this judicial district pursuant to 28 U.S.C. § 1391(b) because Defendants reside here and a substantial part of the events giving rise to these claims occurred within this judicial district.

#### **PARTIES**

8. Wendt Holdings is a New York not-for-profit corporation, having its principal place of business at 40 Fountain Plaza, Buffalo, New York 14202.

9. Wendt Holdings is a wholly-owned subsidiary of the Wendt Foundation, a charitable trust organized and existing under the laws of the State of New York that is an exempt entity under Section 501(c)(3) of the Internal Revenue Code. The Wendt Foundation was established on February 20, 1956 to promote and assist religious, charitable, educational, and scientific causes primarily in the Western New York area.

10. Upon information and belief, Roycroft Realty is an assumed name of Defendants, with a principal address at 2770 Delaware Avenue, Kenmore, New York.

### **FACTUAL ALLEGATIONS**

#### **The Wendt Parties and ROYCROFT Marks**

11. The Roycroft Inn first opened for business in East Aurora, New York in 1905 and has become known worldwide as the home of the Roycroft Movement. A brief summary of the history of the Roycroft Movement is attached hereto as **Exhibit A**.

12. In 1987, Wendt Foundation resolved to rescue the historic Inn and support, preserve and enhance the famous American Arts and Crafts Movement that was founded there.

13. After Wendt Foundation established Wendt Holdings in 1995 for the purpose of preserving all things “Roycroft,” Wendt Holdings acquired, by assignment, the portfolio of ROYCROFT Marks, including United States Trademark Registration No. 4,024,819 for ROYCROFT used in connection with hospitality services.

14. Since 1995, Wendt Holdings has promoted and operated the Inn and used in commerce the ROYCROFT Marks.

#### **Defendants’ Acts of Infringement and Unfair Competition**

15. Roycroft Realty is selling real estate services using an infringing “Roycroft” designation. An exemplar of Roycroft Realty’s online advertising is attached hereto as **Exhibit B**.

16. Wendt Holdings has not authorized Roycroft Realty to use the “Roycroft” designation for any purpose.

17. Upon information and belief, Roycroft Realty is well aware of the strength of the ROYCROFT Mark, and the goodwill symbolized thereby, and that by its advertising and

promotion of services under the infringing “Roycroft” designation is attempting to trade on that fame and strength.

18. Upon information and belief, Roycroft Realty intends to continue to use the infringing “Roycroft” designation in connection with its services. Roycroft Realty’s infringing conduct is likely to confuse, mislead, or deceive consumers as to the origin, source, sponsorship, or affiliation of Roycroft Realty’s business and to cause consumers to believe in error that Roycroft Realty’s business and services have been authorized or sponsored by Wendt Holdings.

**FIRST CAUSE OF ACTION**  
**(Lanham Act Trademark Infringement)**

19. Wendt Holdings repeats, realleges and incorporates herein by reference each and every allegation contained in all of the preceding paragraphs hereof.

20. Roycroft Realty has used and continues to use in commerce the infringing “Roycroft” designation to promote its real estate services in a manner that is likely to cause confusion or mistake among consumers in violation of 15 U.S.C. § 1114(1).

21. Upon information and belief, Roycroft Realty has used and will continue to use the infringing “Roycroft” designation for the purpose of trading on and misappropriating the reputation and good will associated with the ROYCROFT Marks.

22. Defendant’s conduct complained of herein will cause Wendt Holdings irreparable injury unless enjoined.

23. Upon information and belief, Roycroft Realty’s infringement of the ROYCROFT Marks has been deliberate and willful. This is an exceptional case within the meaning of 15 U.S.C. § 1117(a).

**SECOND CAUSE OF ACTION**  
**(Lanham Act Unfair Competition)**

24. Wendt Holdings repeats, realleges and incorporates herein by reference each and every allegation contained in all of the preceding paragraphs hereof.

25. Roycroft Realty has violated 15 U.S.C. § 1125(a) by advertising services bearing the infringing “Roycroft” designation in a manner that is likely to create a false association in the minds of consumers between genuine services bearing the ROYCROFT Marks and Roycroft Realty’s services bearing the infringing “Roycroft” designation.

26. Roycroft Realty’s violation of 15 U.S.C. § 1125(a) has been deliberate and willful, making this an exceptional case within the meaning of 15 U.S.C. §§ 1117(a), (b).

27. Upon information and belief, by its acts, Roycroft Realty has made and/or will make substantial profits and gains to which it is not entitled in law or equity.

28. Roycroft Realty’s acts have damaged and will continue to damage Wendt Holdings, and Wendt Holdings has no adequate remedy at law.

**THIRD CAUSE OF ACTION**  
**(New York Common Law Unfair Competition)**

29. Wendt Holdings repeats, realleges and incorporates herein by reference each and every allegation contained in all of the preceding paragraphs hereof.

30. Wendt Holdings owns all right, title, and interest in and to the ROYCROFT Marks as set forth above, including all common law rights.

31. The foregoing acts of Roycroft Realty are intended and are likely to confuse, mislead, or deceive consumers, the public, and the trade as to the origin, source, sponsorship, or affiliation of Roycroft Realty’s business and services, and are intended and are likely to cause such parties to believe in error that Roycroft Realty’s business and services have been authorized, sponsored, approved, endorsed, or licensed by Wendt Holdings, or that Roycroft

Realty is in some way affiliated with Wendt Holdings and/or its authorized users of the ROYCROFT Marks.

32. The foregoing acts of Roycroft Realty constitute unfair competition in violation of the common law of the State of New York.

33. Upon information and belief, Roycroft Realty by its acts has made and/or will make substantial profits and gains to which it is not entitled, whether in law or equity.

34. Upon information and belief, Roycroft Realty intends to continue its willful infringement unless restrained by this Court.

35. Roycroft Realty's acts have damaged and will continue to damage Wendt Holdings, for which Wendt Holdings has no adequate remedy at law.

**FOURTH CAUSE OF ACTION**  
**(New York Dilution – GBL § 360-1)**

36. Wendt Holdings repeats, realleges and incorporates herein by reference each and every allegation contained in all of the preceding paragraphs hereof.

37. Through prominent, long and continuous use in commerce, including commerce within the State of New York, the ROYCROFT Marks have become and continue to be distinctive.

38. By the acts described herein, Roycroft Realty has diluted the distinctiveness of the ROYCROFT Marks and has caused a likelihood of harm to Wendt Holdings in violation of the New York General Business Law § 360-1.

39. Upon information and belief, Roycroft Realty by its acts have made and/or will make substantial profits and gains to which it is not entitled, whether in law or equity.

40. Upon information and belief, Roycroft Realty intends to continue its willful infringement unless restrained by this Court.

41. Roycroft Realty's acts have damaged and will continue to damage Wendt Holdings, for which Wendt Holdings has no adequate remedy at law.

**JURY DEMAND**

42. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Wendt Holdings hereby demands a trial by jury on all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Wendt Holdings respectfully demands judgment (1) awarding Wendt Holdings damages against Roycroft Realty in an amount to be determined at trial, including treble damages; (2) enjoining and restraining Roycroft Realty from further acts of infringement; and (3) awarding Wendt Holdings such other relief and equitable remedies as to this Court appear just and proper.

Dated: Buffalo, New York  
October 5, 2016

BARCLAY DAMON LLP

s/ Charles von Simson

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Charles von Simson, Esq.  
Jacob Sonner, Esq.  
200 Delaware Ave., Suite 1200  
Buffalo, NY 14202  
(716) 858-3865

*Attorneys for Plaintiff Margaret L. Wendt  
Foundation Holdings, Inc.*